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CASE NO. 82-549

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1982

VICTORY BAPTIST TEMPLE, INC.,
Petitioner,

v.

INDUSTRIAL COMMISSION OF OHIO and
OHIO BUREAU OF WORKERS' COMPENSATION
Respondents.

BRIEF OF RESPONDENT OPPOSING PETITION FOR WRIT OF CERTIORARI

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TABLE OF CONTENTS

Page

Table of Authorities ii
Summary of Argument 1
Statement of the Case 2
Statement of the Facts 3
Reasons for Denying the Writ:

1. THE COURTS BELOW DID NOT ERR IN FINDING THAT THERE WAS NO GENUINE ISSUE AS TO ANY MATERIAL FACT AND THAT REASONABLE MINDS COULD COME TO BUT ONE CONCLUSION AND THAT THAT CONCLUSION WAS ADVERSE TO VICTORY BAPTIST TEMPLE, INC., AND THAT THE INDUSTRIAL COMMISSION OF OHIO WAS ENTITLED TO JUDGMENT AS A MATTER OF LAW 4

2. APPLICATION OF OHIO REVISED CODE CHAPTERS 4121 AND 4123 TO VICTORY BAPTIST TEMPLE IS NOT VIOLATIVE OF THE FIRST AMENDMENT TO THE UNITED STATES CONSTITUTION 7

Conclusion 11
Appendix ..... App. 1

TABLE OF AUTHORITIES

CASES: **Page**

United States v. Lee _____ *U.S.* _____
102 S.Ct. 105, 71 L.Ed. 2d 127 (1982) 8

SUMMARY OF ARGUMENT

The Courts below did not err in granting judgment based upon the written stipulations of fact filed in the case. Likewise, no error was committed in finding that the First Amendment to the United States Constitution was not violated by applying Ohio's Workers' Compensation Law to Petitioner's paid employees.

STATEMENT OF THE CASE

This case originated in the Court of Common Pleas, Lorain County, Ohio as a Declaratory Judgment action, seeking relief from the application of the Ohio Workers' Compensation laws to the Petitioner, Victory Baptist Temple, Inc.

The Court of Common Pleas, based upon the Complaint, the Answer, Stipulated Facts filed in the case, and various Affidavits, granted the motion of the Industrial Commission for Summary Judgment and overruled a similar motion by Victory Baptist Temple, Inc. Victory Baptist Temple, Inc., then appealed to the Court of Appeals, Ninth Appellate District of Ohio. The case was briefed and argued on January 28, 1982, and by decision dated March 24, 1982, the Court of Appeals affirmed the decision of the Court of Common Pleas.

Victory Baptist Temple, Inc., an Ohio corporation, then filed a memorandum in support of jurisdiction in the Supreme Court of Ohio. A memorandum in opposition was filed on behalf of the Industrial Commission of Ohio and the Court overruled the motion. Victory Baptist Temple, Inc. now petitions this Honorable Court for a Writ of Certiorari.

STATEMENT OF THE FACTS

After nearly three-quarters (3/4) of a century of Workers' Compensation in the State of Ohio, and virtually every other state in the Union, Victory Baptist Temple, Inc. now brings this action alleging that such a system violates its First Amendment rights. All material facts in the case at bar were stipulated by parties are not in dispute.

The material, stipulated facts in this case are that the Petitioner, Victory Baptist Temple, Inc., is a corporation organized under the laws of the State of Ohio. It was further stipulated that the Petitioner, Victory Baptist Temple, Inc., "regularly employs persons" who operate, its church and school for "financial remuneration."

At Petitioner's request, the Industrial Commission of Ohio conducted a rating inspection. Petitioner had been paying premiums to the Industrial Commission prior to this inspection. Premiums were assessed, pursuant to the Ohio Workers' Compensation laws, for those persons who receive salaries from the church. Victory Baptist Temple, Inc., then refused to pay the premiums on the grounds that the law interfered with its "sincerely held" religious beliefs in that it could not in good conscience "render church monies unto Caesar." It made this refusal after years of contribution to the State Insurance Fund.

In the alternative, Victory Baptist Temple, Inc., proposed to accomplish the goals of the Workers' Compensation laws by "voluntarily" caring for their ill or disabled employees. In the Court of Common Pleas, Victory Baptist Temple, Inc., first contended that it was its "sincerely held" religious belief that it could not "render unto Caesar" money for taxes. Secondly, Victory Baptist

Temple, Inc., contended that the application of the Workers' Compensation laws to the church would cause an "unnecessary interference" in its religious affairs. The Trial Judge granted Summary Judgment against the Petitioner based upon stipulated facts and found that the Ohio Workers' Compensation laws do cover the paid employees of the church and that Victory Baptist Temple, Inc., must contribute based upon these salaries.

In the Court of Appeals, Victory Baptist Temple, Inc., proceeded only on the theory that the Ohio Workers' Compensation system would "unnecessarily interfere" with church affairs. The Court of Appeals in a well reasoned decision found that such was not the case.

On March 24, 1982, the Ohio Supreme Court overruled Petitioners' Motion in Support of Jurisdiction. Victory Baptist Temple, Inc. now petitions this Honorable Court for a Writ of Certiorari.

REASONS FOR DENYING THE WRIT.

1. **THE COURTS BELOW DID NOT ERR IN FINDING THAT THERE WAS NO GENUINE ISSUE AS TO ANY MATERIAL FACT AND THAT REASONABLE MINDS COULD COME TO BUT ONE CONCLUSION AND THAT THAT CONCLUSION WAS ADVERSE TO VICTORY BAPTIST TEMPLE, INC., AND THAT THE INDUSTRIAL COMMISSION OF OHIO WAS ENTITLED TO JUDGMENT AS A MATTER OF LAW.**

As previously noted in the Statement of Facts, the parties in the case *sub judice* entered into a written stipulation of fact which was timely filed in the case. The Petitioner, Victory Baptist Temple, Inc., cannot controvert these facts on appeal.

The first step which both the Trial Court and Court of Appeals took was to ascertain whether or not the Petitioner, Victory Baptist Temple, Inc., was covered by the provisions of the Ohio Workers' Compensation law. As the Court of Appeals noted at Page 5 of its decision:

> "R.C. 4123.01(A) states in relevant part:
>
> > 'as used in Chapter 4123 of the Revised Code: A. Employee, workman, or operative means:***
> >
> > 2. Every person in the service of any person, firm or private corporation, including any public service corporation that (a) employs one or more workmen or operatives regularly in the same business or in or about the same establishment under any contract of hire, expressed or implied, oral or written, including aliens and minors***

> B. Employer means:***
>
> 2. Every person, firm, and private corporation, including any public service corporation that (a) has in service one (1) or more workmen or operatives regularly in the same business or in or about the same establishment under any contract of hire, expressed or implied, oral or written***"

Victory Baptist admits that it is a private corporation and that persons are regularly employed to operate the church and church day school. These people are paid money by the church for performing these services. Thus the persons receiving pay for operating the church and school fall within the plain language of the statute's definition of employees. Likewise, the church comes within the statutory definition of an employer."

(Appendix A, App. 5)

Thus, there was no material issue of fact to be decided at a trial. As was previously noted in the Statement of the Case, the case was submitted to the Trial Court on stipulated facts and cross-motions for summary judgment. Thus, Petitioners complaint of not receiving an evidentiary hearing is groundless. Had Petitioner wished to present more "evidence", it should have done so in the more than two years in which the case was pending in the Trial Court and not waited until this time to so complain. Furthermore, it must be noted that Appendix E to Petitioners Brief, which

purports to be a list of churches, was *not* presented to either the Trial Court of the Court of Appeals, below. It is now totally inappropriate to append such a list in this Court.

2. APPLICATION OF OHIO REVISED CODE CHAPTERS 4121 AND 4123 TO VICTORY BAPTIST TEMPLE IS NOT VIOLATIVE OF THE FIRST AMENDMENT TO THE UNITED STATES CONSTITUTION.

Petitioner complains that to require it to contribute to the State Insurance Fund is a violation of its rights under the First Amendment of the United States Constitution. Obviously, the First Amendment guarantees were not meant to prohibit the State from imposing *any* of its laws upon a church organization. In point of fact, churches are not immune from civil liability at common law in Ohio. Therefore, were it not for Ohio Workers' Compensation laws, Victory Baptist Temple, Inc., could be sued in a civil action in the Courts of Ohio by its injured employees.

The Ohio General Assembly has, however, replaced common law actions against an employer by an employee for injuries received in the "course of employment" by the Workers' Compensation system. It is inconceivable that Victory Baptist Temple, Inc., can be heard to complain of the system which absolves it of civil liability and replaces that liability with a schedule of benefits. There is no excessive governmental entanglement involved in the payment of a premium based upon Petitioner's payroll to its regular salaried employees.

Moreover, the issue involved in the case at bar was decided just last term by this Court in *United States v. Lee* _____ U.S. _____, 102 S.Ct. 105, 71 L.Ed. 2d 127 (1982). As the Ninth District Court of Appeals of Ohio noted in its opinion at page 7:

> "Appellant's contention that the compliance abridges its right to freely exercise its religion is controlled by *United States v. Lee* (1982), 50 *Law Week* 4201. In *Lee*, the appellee, a member of the old Amish faith, contended that because the payment of Social Security taxes violated the tenets of his religion, compulsory participation in the Social Security system interfered with his free exercise rights. The Court agreed that the clash between apellee's religious obligation and his civic obligation was irreconcilable, but said:***
>
> > "The conclusion that there is a conflict between the Amish faith and the obligations imposed by the Social Security system is only the beginning, however, and not the end of the inquiry. Not all burdens on religion are unconstitutional. (See e.g., *Prince v. Massachusetts*, 321 U.S. 158 (1941), *Reynolds v. U.S.*, 98 U.S. 145 (1879). The State may justify a limitation on religious liberty by showing that it is essential to the accomplishment of an over-

> riding government interest. *Thomas, supra, Wisconsin v. Yoder,* 406 U.S. 205 (1972, *Gillette v. United States,* 401 U.S. 437 (1971), *Sherbert v. Verner,* 374 U.S. 398 (1963)."
>
> (Appendix A, App. 6)

The Court of Appeals went on to say that at Page 8 of its decision:

> "Finding that the Social Security system serves the public interest by providing a comprehensive nationwide insurance system with a variety of benefits available to all participants, the court held that:
>
> > "***the government's interest in assuring mandatory and continuance participation in and contribution to the Social Security system is very high"*** *Id.*
>
> "The court then considered whether accommodating the Amish belief would unduly interfere with the fulfillment of the government interest and found: '***because the broad public interest in maintaining a sound tax system it is of such a high order religious belief in conflict with the payment of taxes affords no basis of restricting the tax.' "*** *Id.* at 4204. *"Assessments, pursuant to Ohio Revised Code Chapter 4123 are analogous to the mandatory contribu-*

> *tions required by the Social Security Act. In the instant case, the State has an 'overriding governmental interest' in compensating workers' and their dependents for death, occupational disease, and injury occuring in the course of employment.* To accomplish this purpose, the State has enacted comprehensive legislation creating a system which requires support by mandatory contributions by covered employers. *Widespread voluntary coverage would undermine the soundness of the program and be difficult, if not impossible, to administer with the myriad of exceptions flowing from a wide variety of religious beliefs. The assessments imposed upon employers to support the system is uniformly applicable to all, except as the General Assembly provides explicitly otherwise. Thus, we find no constitutionally required exemption for Appellant from the operation of the Workers' Compensation Act."* (Emphasis added)
> (Appendix A, App. 7)

Thus, as can be seen, unlike what Petitioner would lead this Court to believe, the Court of Appeals carefully weighed the Petitioner's contentions that the Workers' Compensation system unnecessarily interfered with and entangled the government in its affairs. It is submitted that *Lee, supra,* is directly on point with the case at bar.

CONCLUSION

This Court, during its last term, decided the issue involved herein. It is respectfully submitted that the petition for a Writ of Certiorari should be denied.

Respectfully submitted,

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APPENDIX A

IN THE COURT OF APPEALS NINTH JUDICIAL DISTRICT

State of Ohio, County of Lorain, ss:

C.A. NO. 3262

VICTORY BAPTIST TEMPLE, INC.,

Plaintiff-Appellant,
vs.

INDUSTRIAL COMMISSION OF OHIO, et al.,
Defendants-Appellees.

APPEAL FROM JUDGMENT ENTERED IN THE COMMON PLEAS COURT COUNTY OF LORAIN, OHIO

CASE NO. 84897 79

DECISION AND JOURNAL ENTRY

Dated: March 24, 1982

This cause was heard January 28, 1982, upon the record in the trial court, and the briefs. It was argued by counsel for the parties and submitted to the court. We have reviewed each assignment of error and make the following disposition:

QUILLIN, J.

Victory Baptist Temple, Inc., plaintiff-appellant, appeals a judgment of the Court of Common Pleas that the Ohio Workers' Compensation Laws as applied to the appellant are constitutional. We affirm.

The stipulations and affidavits of the parties reveal the following facts. The defendants-appellees, the Industrial Commission of Ohio (Commission) and the Bureau of Workers' Compensation (Bureau) are duly authorized agencies of the State of Ohio which are employed to administer the Workers' Compensation Law. R.C. Chapter 4123.

The plaintiff-appellant, Victory Baptist Temple, Inc. (Victory Baptist or Church), is a non-profit corporation organized under the laws of the State of Ohio which operates a church and a Christian day school in Elyria, Ohio. The church school is not separately incorporated. In addition to volunteer help, Victory Baptist has persons who are regularly employed to operate the church and the church day school and who receive financial remuneration for their services.

At appellant's request, appellees conducted a rating inspection and assessed premiums pursuant to the Workers' Compensation Law for those persons who receive remuneration from the church. The Commission notified the church that it must submit the payroll report and remit the assessed premiums to the Commission. Further, the church was informed that if it did not comply with the provisions of the law, enforcement proceedings would be commenced under R.C. 4123.37 and 4123.99 (C).

Victory Baptist refused to submit to these demands on the grounds that the law interfered with the sincerely held religious beliefs of the church and its members. The appellant claims it cannot, in good conscience, contribute church monies intended solely for expenditures for religious purposes to the Workers' Compensation Fund. It asserts that to do so would be a sin. Rather, the church proposes to accomplish the goals of the law by voluntarily caring for their ill or disabled employees.

Appellant brought this action in the court below requesting a declaratory judgment and injunctive relief from the application of the law. Each party filed a motion for summary judgment pursuant to Civ. R. 56. Based on the motions and the accompanying stipulations and affidavits, the trial court issued an order and opinion granting appellees' motion and denying that of appellant. The lower court held: (1) that the state's interest in insuring that fair compensation for an employee injured or killed in the course of his employment is a compelling interest, (2) that R.C. 4123.01 (A) and (B) include churches and their paid employees, (3) that application of the law to Victory Baptist does not violate the freedoms of religion guaranteed in the United States and Ohio Constitutions, and (4) that the provisions of the law itself are the least burdensome methods of accomplishing the compelling state purpose.

ASSIGNMENT OF ERROR 2

> "Upon consideration of the evidence in support of and in opposition to the Industrial Commission's Motion for Summary Judgment, the lower court erred in finding that Victory Baptist is an 'employer' within the meaning of the Workers' Compensation Act and that the protection of its clerical and educational 'employees' is properly governable by the Act."

Relying on the general principle of construing statutes to avoid unnecessary constitutional decisions, the United States Supreme Court in NLRB v Catholic Bishop of Chicago (1979), 440 U.S. 490, 501 held:

"* * *.

"The values enshrined in the First Amendment plainly rank high 'in the scale of our national values.' In keeping with the Court's prudential policy it is incumbent on us to determine whether the Board's exercise of its jurisdiction here would give rise to serious constitutional questions. If so, we must first identify 'the affirmative intention of the Congress clearly expressed' before concluding that the Act grants jurisdiction."

Thus, appellant argues unless the General Assembly expressly includes religious institutions within its definition of "employer" (R.C. 4123.01 (B)) and "employee" (R.C. 4123.01 (A)), the law must be construed to exempt churches and ther ministries from coverage. We do not agree.

Congress did not specifically include church schools in its grant of jurisdiction to the National Labor Relations Board. However, this lack of an express inclusion was not dispositive of the issue before the high court. Rather, the court in Catholic Bishop of Chicago, supra, examined the language and the legislative history of the National Labor Relations Act to determine Congressional intent. In the instant case the language and legislative history admits to no other conclusion than that the General Assembly intended to include churches and their employees within the protection of the Workers' Compensation Law.

Section 35, Article II, of the Ohio Constitution states:

"For the purpose of providing compensation to workmen and their dependents, for death, injuries or occupational disease, occasioned in the course of such workmen's employment, laws may be passed

> establishing a state fund to be created by compulsory contribution thereto by employers, and administered by the state, determining the terms and conditions upon which payment shall be made therefrom.* * *."

Because its purpose is remedial, the Act must be liberally construed. R.C. 1.11. See also, R.C. 4123.95.

R.C. 4123.01 (A) states in relevant part:

> "As used in Chapter 4123. of the Revised Code:
>
> "(A) 'Employee,' 'workman,' or 'operative' means:
>
> "* * *.
>
> "(2) Every person in the service of any person, firm, or private corporation, including any public service corporation, that (a) employs one or more workmen or operatives regularly in the same business or in or about the same establishment under any contract of hire, express or implied, oral or written, including aliens and minors, * * *.
>
> "(B) 'Employer' means:
>
> "* * *.
>
> "(2) Every person, firm, and private corporation, including any public service corporation, that (a) has in service one or more workmen or operatives regularly in the same business or in or about the same establishment under any contract of hire, express or implied, oral or written, * * *."

Victory Baptist admits that it is a private corporation and that persons are regularly employed to operate the

church and church day school. These people are paid money by the church for performing these services. Thus, the persons receiving pay for operating the church and school fall within the plain language of the statute's definition of employees. Likewise, the church comes within the statutory definition of an employer.

The Workers' Compensation Law has been characterized by the broadest possible coverage with frequent amendments to insure that no class of employers or employees was unintentially excluded. If the legislature had intended to exclude religious institutions, it had ample opportunity to do so. We believe that the legislature intended for employees of religious institutions to come under the protection of the Act.

ASSIGNMENT OF ERROR 4

> "Upon consideration of the evidence in support of and in opposition to the Industrial Commission's Motion for Summary Judgment, the lower court erred in finding that the application of O.R.C. Chapters 4121 and 4123 of the Revised Code to Victory Baptist is not violative of the First Amendment."

Appellant's contention that the compliance abridges its right to freely exercise its religion is controlled by United States v Lee (1982), — U.S. —, 50 Law Week 4201. In Lee, the appellee, a member of the Old Amish faith, contended that, because the payment of social security taxes violated the tenents of his religion, compulsory participation in the social security system interfered with his free exercise rights. The court agreed that the clash between appellee's religious obligation and his civic obligation was irreconcilable but said:

"* * *.

"The conclusion that there is a conflict between the Amish faith and the obligations imposed by the social security system is only the beginning, however, and not the end of the inquiry. Not all burdens on religion are unconstitutional. See, e.g., Prince v. Massachusetts, 31 U.S. 158 (1944); Reynolds v. United States, 98 U.S. 145 (1879). The state may justify a limitation on religious liberty by showing that it is essential to accomplish an overriding governmental interest. Thomas, supra; Wisconsin v. Yoder, 406 U.S. 205 (1972); Gillette v. United States, 401 U.S. 437 (1971); Sherbert v. Verner, 374 U.S. 398 (1963)."

"* * *." Id. at 4203.

Finding that the social security system serves the public interest by providing a comprehensive, nationwide insurance system with a variety of benefits available to all participants, the court held that:

"* * * the government's interest in assuring mandatory and continuous participation in and contribution to the social security system is very high,"

"* * *." Id.

The court then considered whether accommodating the Amish belief would unduly interfere with the fulfillment of the governmental interest and found:

"* * * Because the broad public interest in maintaining a sound tax system is of such a high order, religious belief in conflict with the payment of taxes affords no basis for resisting the tax."

"* * *." Id. at 4204.

Assessments pursuant to R.C. Chapter 4123 are analogous to the mandatory contributions required by the Social Security Act. In the instant case, the state has an "overriding governmental interest" in compensating workers and their dependents for death, occupational disease, and injury occuring during the course of employment. To accomplish this purpose, the state has enacted comprehensive legislation creating a system which requires support by mandatory contributions by covered employers. Widespread voluntary coverage would undermine the soundness of the program and be difficult, if not impossible, to administer with the myriad of exceptions flowing from a wide variety of religious beliefs. The assessments imposed on employers to support the system is uniformly applicable to all, except as the General Assembly provides explicitly otherwise. Thus, we find no constitutionally required exemption for appellant from the operation of the Workers' Compensation Act.

ASSIGNMENTS OF ERROR

"1. Upon consideration of the evidence in support of and in opposition to the Industrial Commission's Motion for Summary Judgment, the lower court erred in finding that O.R.C. Chapters 4121 and 4123 apply to Victory Baptist.

* * *

"3. Upon consideration of the evidence in support of an in opposition to the Industrial Commission's Motion for Summary Judgment, the lower court erred in finding that the protections afforded to workers at Victory Baptist under the Church's Scriptural duty to aid one another in time of need due to accident or illness is 'independable (sic) and illusory.'"

In Lee, supra, the appellee demonstrated the Amish capacity to care for their own. However, despite the fact the Amish make sufficient provision for their dependent members the high court was not persuaded to exempt the appellee from paying social security assessments. In the instant case, Victory Baptist is within the coverage of the Workers' Compensation Act, even though it would aid its workers in time of illness or injury.

There being no genuine issue of material fact between the parties, the trial court properly granted appellee's motion for summary judgment pursuant to Civ. R. 56 (C).

The judgment is affirmed.

The court finds that there were reasonable grounds for this appeal.

We order that a special mandate, directing the County of Lorain Common Pleas Court to carry this judgment into execution, shall issue out of this court. A certified copy of this journal entry shall constitute the mandate, pursuant to App. R. 27.

Immediately upon the filing hereof, this document shall constitute the journal entry of judgment, and it shall be file stamped by the Clerk of the Court of Appeals at which time the period for review shall begin to run. App. R. 22 (E).

Costs taxed to appellant.

Exceptions.

/s/ Edward I. Mahoney
Presiding Judge for the Court

MAHONEY, P.J.
BELL, J.
CONCUR

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